

## REMARKS

Claims 18-34 are pending. Claim 18 has been amended. These amendments are supported throughout the specification – particularly at par. [0020].

### **I. Anticipation Rejections**

Claims 18-20 and 23-25 stand rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Pat. No. 6,134,531, to Trewitt et al. These rejections are respectfully traversed, for the following reasons.

#### **A. Trewitt fails to teach the limitations of claims 18-20 and 23-25**

Trewitt does not teach the limitations of the present claims. Claim 18, for example, as amended requires:

18. A computer system for gathering data to be used in scripting, directing, writing, or producing a show yet to be broadcast, comprising:

means for sending an electronic query to a member of a test audience for said show, wherein said query elicits an electronic feedback message;

means for receiving said feedback message; and

means for electronically transmitting data comprising said feedback message, wherein said data is electronically analyzed and utilized in development of said show prior to being broadcast.

The underlined language shows some of the limitations of claim 18 absent from Trewitt.

For example, the description in Trewitt is clearly directed to *real-time* interaction with a *broadcast* program. In contrast, claim 18 is limited to a *test* audience viewing a program that has *not yet been broadcast*.

Likewise, since Trewitt is directed to a program being broadcast (i.e., a program that already has been developed), Trewitt's description is completely unrelated to a test audience providing feedback to be used in *development* of a show prior to that show being broadcast, as required by claim 18.

For at least the above reasons, Trewitt cannot anticipate claim 18. Indeed, Trewitt is directed to a completely different problem (ascertaining audience reaction to a show being broadcast) than that to which claim 18 is directed.

Of course, Trewitt also cannot anticipate dependent claims 19, 20, and 23-25 because Trewitt does not anticipate claim 18, from which those claims depend.

Moreover, Trewitt does not teach “a television or online series of situational comedies, episodic shows, or soap operas.” The Office Action states that Trewitt teaches “a television show,” but ignores the clear limitation of claim 19 to a television or online *series* of situational comedies, episodic shows, or soap operas. These limitations are neither taught nor suggested by Trewitt.

Surprisingly, when (on page 6) the present Office Action addresses this argument (also made in Applicant’s preceding response), the word “series” is omitted. Applicant respectfully requests that due consideration be provided to all limitations of the pending claims.

In light of the above, reconsideration and withdrawal of the 102(a) rejections of claims 18-20 and 23-25 over Trewitt is respectfully requested.

## **II. Unpatentability Rejections**

Claims 21-22, 26, and 28-34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Trewitt. These rejections also are respectfully traversed, for the following reasons.

### **A. Trewitt fails to teach the alleged limitations, and the claims are mischaracterized**

Regarding claims 21 and 22, the Office Action contains several errors. First, the Office Action asserts that “Trewitt teaches structuring the responses to the user’s input into said story.” This both mischaracterizes claim 21 and ignores the claim as a whole.

Claim 21 is mischaracterized in that it requires the *queries* to be structured – not the “responses” – especially not “responses to the user’s input.” Moreover, claim 21 relates to user responses to queries, not responses to user input – a completely different concept.

Also, claim 21 depends from claim 18, and rewritten in independent form (to make all limitations explicit) reads as follows:

A computer system for gathering data to be used in scripting, directing, writing, or producing a show, comprising:  
means for sending an electronic query to a member of a test audience, wherein said query elicits an electronic feedback message;  
means for receiving said feedback message; and  
means for electronically transmitting data comprising said feedback message, wherein said data is electronically analyzed and utilized in development of said show, and  
wherein said query is part of a plurality of queries structured in a multi-tiered manner based on when a tier of questions and responses can be incorporated into said show.

Thus, the “query” in claim 21 is a query sent to a member of a *test audience* – a limitation neither taught nor suggested by Trewitt’s system. Therefore, Trewitt does not teach the query of claim 21. For analogous reasons, Trewitt fails to teach the limitations of claims 22 and 26.

Although the Office Action attempts to take Official Notice in order to cure this deficiency of Trewitt, that taking is improper, as discussed in detail below.

**B. The Office Action improperly takes “Official Notice” of every claim limitation absent from Trewitt**

Generally, the Office Action improperly tries to use “Official Notice” to reject all pending claims that the Patent Office admits have limitations absent from Trewitt. All such takings of Official Notice are improper, unsupported, and should be withdrawn.

**(1) Applicant respectfully demands documentary evidence**

Pursuant to MPEP § 2144.03(C), Applicant hereby traverses each such taking of official notice and (again) respectfully demands (pursuant to the *Chevenard* decision) that the Patent Office provide supporting documentary evidence, in the next office action, for each taking of official notice, if the corresponding rejections are to be maintained.

**(2) The Patent Office’s takings of Official Notice are not well-reasoned**

Moreover, the takings of Official Notice in the Office Action are not well-reasoned, as required by § 2144.03. Regarding the claim 21 limitation of “said query is part of a plurality of

queries structured in a multi-tiered manner based on when a tier of questions and responses can be incorporated into said show,” the Office Action says that limitation is “old and well known” because “based on the stage of when a new product or service, will be marketed different level of information is needed for the customers in order to fully develop the product/services.” Applicants are unsure of the meaning of the quoted language, and clarification is respectfully requested. Although this request for clarification was made in the response to the previous office action, this same unclear language is repeated in the present Office Action, which also fails to provide the clarification previously requested.

In any event, marketing goods or services has no apparent connection with a multi-tiered plurality of queries whose responses are to be incorporated into a television (or other) show to be produced in the future, as required by claim 21, or with the “additional tier of such queries that can be immediately incorporated into a television show production” required by claim 22. Thus, the “sound technical and scientific reasoning” required by MPEP § 2144.03 is not present in the rejections of claim 21 and 22.

Similarly, claims 28-33 are rejected on the taking of Official Notice that:

[I]t is old and well known in TV shows to place commercials promoting responses to shows, educating the audience of the upcoming shows in order to promote the upcoming events. For example, previews of upcoming shows promote audience participation and viewership of the show, as well as educate and promote the show and shows the viewers mini-portions of the upcoming shows, the viewers feedback is measure by the viewership of the show.

Based solely on the above statement which, as best understood, states only that commercials showing previews of upcoming shows were known, the Patent Office concludes that prequel-mercials (described in the specification of the present application as “a convergence of advertising, storytelling, and interactivity”) comprised in a query sent to a member of a test audience and eliciting a feedback message used in development of a show, as required by claims 28-33, is “obvious.” Again, this conclusion by the Patent Office fails to satisfy MPEP § 2144.03: the conclusion is not based on “sound technical and scientific reasoning,” but rather is completely unsupported (there is no apparent connection between commercials advertising future shows and the prequel-mercials of claims 28-33), and should be reconsidered and withdrawn.

The rejection of claim 34 focuses solely on the “product placement advertisement” limitation of that claim, and ignores the fact that claim 34 depends from claim 33, which depends from claim 28, which depends from claim 18. The “product placement advertisement” limitation of claim 34 must be read in the context of the entire claim, including all claims incorporated therein. In that context, which requires the “product placement advertisement” to be comprised in the prequel-mercial of claim 33 and claim 28, and to be within the storyline of claim 33, which is supportive of the show of claims 28 and 18, the fact that “product placement advertisement” alone may have been known has little relevance. When claim 34 is considered as a whole, as it must be, there is no support for its rejection – the required limitations are neither taught by Trewitt nor are “old and well known,” and that rejection should be reconsidered and withdrawn.

Finally, the rejection of claim 26 depends on the rejection of claim 18, which has been explained above to have been in error.

### **(3) The Office Action Again Fails to Comply with MPEP 2144.03**

In the present Office Action, the previous traversal of the takings of Official Notice is met with the statement that “the Examiner should not be obliged to spend time to produce documentary proof.” Applicant finds this statement disconcerting, to say the least. It implies that the Examiner feels entitled to reject claims over imagined prior art.

In any event, the Office Action goes on to cite MPEP 2144.03 for the proposition: “If the knowledge is of such notorious character that official notice can be taken, it is sufficient to state so.” Applicant respectfully points out that: (a) none of the subject matter is of such notorious character (whatever that may mean); and (b) in any event, the Office Action does not “say so.”

Far more important, however, is the fact that the following requirements of MPEP 2144.03 continue to be entirely ignored by the Patent Office. These requirements mandate the withdrawal of the improper takings of official notice in the present and previous Office Actions:

Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While “official notice” may be relied on, *these circumstances should be rare when an application is under final rejection . . .*”

Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are *capable of instant and unquestionable demonstration as being well-known*.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable *demonstration* as being well-known.

If applicant adequately traverses the examiner's assertion of official notice, the *examiner must provide documentary evidence in the next Office action if the rejection is to be maintained*.

Applicant respectfully requests compliance with the above requirements.

Finally, the rationales asserted for combining Trewitt with "Official Notice" fails to satisfy the "rational underpinning" requirement of both the Patent Office's "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*" ("KSR Guidelines") and the *KSR* decision itself: "Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." See also MPEP 2142(I).

For example, the Office Action asserts that "previews of upcoming shows promote audience participation and viewership of the show, as well as educate and promote the show and shows the viewers mini-portions of the upcoming shows, the viewers feedback is measured by viewership of the show." This assertion fails the KSR test on several grounds: (a) it is not "articulated reasoning" (Applicant finds it extremely unclear); (b) it is a mere conclusory statement (there is no supportive reasoning or evidence); and (c) it provides no rational *underpinning* (i.e., support) for the subsequent conclusion of obviousness, which is merely a paraphrase of limitations of the rejected claims.

Moreover, Applicant respectfully submits that the Office Action improperly uses the claims as a roadmap for combining references. In making the assessment of differences between the prior art and the claimed subject matter, section 103 specifically requires consideration of the

claimed invention “as a whole.” Inventions typically are new combinations of existing principles or features. The “as a whole” requirement in section 103 and MPEP 2141.02 prevents evaluation of the invention part by part.

Without this important requirement, an Examiner seeking to reject a claim could simply break a claim into its component parts, then find a prior art reference corresponding to each component. This approach improperly imports hindsight into the obviousness determination by using the invention as a roadmap to find its separate components in the prior art. Further, this improper method discounts the value of combining various existing features or principles in a new way to achieve a new result - often the essence of invention.

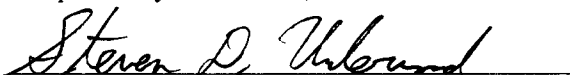
At a minimum, a logical connection (where the logic is not dependent on the pending claims) must be made between the claimed invention and the prior art of record. The Office Action makes no such connection.

In light of the above, all claim rejections are believed to have been successfully traversed, and Applicant respectfully requests that all of those rejections be reconsidered and withdrawn.

No fee is believed due in connection with this Response (other than the extension fee authorized above). If any other fee is required, please charge such fee to Deposit Account No. 50-0310.

Date: November 17, 2008

Respectfully submitted,

A handwritten signature in cursive script, reading "Steven D. Underwood", is written over a horizontal line.

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